

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

CONTINENTAL CASUALTY COMPANY,)

Plaintiff,)

v.)

CASE NO.: 2:07cv221-WHA

**ALABAMA EMERGENCY ROOM)
ADMINISTRATIVE SERVICES, P.C.)**

Defendant.)

**DEFENDANT’S MOTION TO STRIKE PLAINTIFF’S
MOTION FOR FINDINGS OF FACT AND ENTRY OF JUDGMENT**

COMES NOW Defendant Alabama Emergency Room Administrative Services, P.C. (AERAS) and, in response to Plaintiff’s *Motion for Findings of Fact and Entry of Judgment* [Doc. 37], respectfully moves this Court to strike the pleading for reasons set forth as follows:

1. On October 29, 2007, as contained in *Joint Motion to Extend Deadlines and to Continue Trial*, the parties hereto jointly moved this Court to allow this matter to be submitted on briefs, without the necessity of a trial or other formal hearing. [Doc. 20] Specifically, as contained in paragraph 3 of said motion, the parties jointly stated: “Due to the unique nature of this action, the parties agree that the issues for decision in this matter can likely be decided on briefs and without the necessity of a trial.” [Id.]

2. In response to the above cited joint motion, this Court entered an Order on October 29, 2007, granting the parties request to submit this matter on briefs, specifically stating: “This case will be submitted to the court on an Agreed Statement of Facts and Exhibits, with briefs” and outlining a briefing schedule accordingly. [Doc. 21]

3. The parties have submitted the Agreed Statement of Facts and Exhibits pursuant to this Court's Order [Doc. 21] and Plaintiff has submitted its brief [Doc. 38]. Defendant's brief will be filed August 8, 2008.

4. Plaintiff, despite the clear Order of this Court, has filed an additional pleading, *Motion for Findings of Fact and Entry of Judgment* [Doc. 37], seeking additional relief through additional, future briefing and/or hearing and/or submission of evidence, asking in paragraph 22 of its motion: "Should the Court enter judgment in Continental Casualty's favor, Continental Casualty respectfully requests that it be permitted to present evidence to the Court regarding the extent of additional, incidental damages to which it may be entitled, including, but not limited to, pre-judgment interest and attorney fees." [Doc. 37]

Despite the agreed upon joint motion [Doc.20], from which this Court's Order [Doc. 21] was based, Plaintiff now seeks to amend such at the time for final brief filing to allow for further procedure seeking relief not previously sought, such not previously agreed upon by the parties nor permitted by this Court. Such relief, if sought, should have been set out in the facts, evidence, and brief already submitted by Plaintiff in this matter, pursuant to this Court's Order [Doc. 21].

5. Defendant was under the impression, as surely was this Court, that the agreement of the parties to submit a brief, in lieu of trial, was to be the only method of presenting the facts, evidence and arguments in this matter. For Plaintiff to now seek additional procedure to do so is in contradiction of the agreement of the parties and this Court's Order. Plaintiff's motion regarding such should be denied and that contained therein stricken, this Court accepting and relying upon the briefs submitted by the parties hereto.

6. Defendant agrees that this Court must enter a judgment in this matter pursuant to

Federal Rule of Civil Procedure 52; however, no motion for such is necessary and that contained in Plaintiff's *Motion for Findings of Fact and Entry of Judgment* [Doc. 37] is merely a recitation of various facts and arguments, also contained in Plaintiff's *Response to the Court's October 29, 2007 Order - Brief in Support of Continental Casualty's Motion for Findings of Fact and Entry of Judgment* [Doc. 38], filed pursuant to the Court's Order [Doc. 21], in addition to the additional relief and procedure requested by Plaintiff.

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully requests this Court strike Plaintiff's *Motion for Findings of Fact and Entry of Judgment* and deny the relief sought therein.

Respectfully submitted this the 8th day of August, 2008.

/s/ Michael J. Cohan

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above and foregoing upon all parties by electronically filing the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification to the following via email this the 8th day of August, 2008.

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/s/ Michael J. Cohan

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